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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,931	08/07/2001	Kim R. Smith	163.1471US01	4550

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/923,931	SMITH ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE filed 10/25/05*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-11,13-15,17-38,75-78 and 85-100* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-11,13-15,17-38,75-78 and 85-100* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 5-11, 13-15, 17-38, 75-78, and 85-100 are pending. Applicant's arguments and amendments filed 9/12/05 have been entered.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/25/05 has been entered.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 6/29/05 have been withdrawn:

The rejection of claims 1, 5-11, 13-15, 17-23, 26-38, 75-78 and 85 under 35 U.S.C. 112, first paragraph, has been withdrawn.

The rejection of claims 1, 5-11, 13-15, 17-23, 26-38, 75-78 and 85 under 35 U.S.C. 112, second paragraph, has been withdrawn.

The rejection of claims 1, 5-11, 13-15, 18-22, 26-33, 36, 37, 75-78, and 85-100 under 35 U.S.C. 102(b) as being anticipated by DE 4026806 has been withdrawn.

The rejection of claims 34 and 35 under 35 U.S.C. 103(a) as being unpatentable over DE 4026806 has been withdrawn.

The rejection of claims 1, 5, 7, 11, 13, 14, 17, 18, 26-38, 75-78, and 85 under 35 U.S.C. 102(e) as being unpatentable over Man et al (US 2003/0162685) has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32-35, 36-38, and 95-97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "type" in claim 32 is a relative term which renders the claim indefinite. The term "type" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It would not be clear to one of ordinary skill in the art as to what compounds fall within and outside the scope of the scope of "citrate-type, polyacetic acid-type, and phosphonate-type" as recited by instant claim 32; thus, one or ordinary skill in the art would not be able to determine the metes and bounds of the claimed invention.

With respect to claims 36 and 95-97, these claims recite in the Markush group "an activator for the active oxygen compound" while instant claims 1 and 23-25 recite that the composition is free of an activator for active oxygen compound. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Note that, with respect to the method as recited by instant claims 1 and 23-25, the Examiner asserts that these claims recite applying to carpet or upholstery an aqueous preparation of a solid agglomerated cleaning composition..., wherein the claims further go on to detail the components contained within the solid or agglomerated cleaning composition, and do not require the presence of a solid or agglomerated cleaning composition. The method claims of 1 and 23-25 simply require applying to carpet an aqueous cleaning solution (i.e., use solution) as detailed on pages 37-42 of

the instant specification; the aqueous preparation is simply a product made by the process of dissolving a solid preparation and the solid preparation as recited by instant claims 1 and 23-25 containing the specific proportions of the required components is not a required limitation of the process of cleaning. The limitation "an aqueous preparation of a solid or agglomerated cleaning composition" is a product-by process limitation within the process of cleaning which does not further limit the process of cleaning as recited by the instant claims; the Examiner has interpreted the composition used in the method of cleaning recited by instant claims 1 and 23-25 as a diluted, liquid composition wherein the proportions of ingredients present in the aqueous composition are much less than the proportions in the solid or agglomerated cleaning composition.

Claims 1, 5-11, 13-22, 26-33, 35-38, 75-78, and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scialla et al (US 6,008,175).

Scialla et al teach a method of cleaning carpets with a composition comprising a surfactant selected from amine oxides and acyl sarcosinates. The compositions are advantageous in that they do not leave a dulling film if no t removed from the carpet after drying. See Abstract. The compositions may be formulated either as solids or liquids. In liquid form, the compositions are preferably but not necessarily formulated as aqueous compositions. In a liquid form is meant neat or diluted form. See column 4, lines 1-20. The Examiner asserts that the neat form of the cleaning composition as taught by Scialla et al would suggest the aqueous preparations as recited by the instant claims. The compositions for cleaning carpets may be used both for manual carpet cleaning and carpet cleaning machines. For carpet cleaning machines, the

compositions for the cleaning of carpets will be diluted to be in a liquid form according to the machine operating instructions. A preffered source of active oxygen is hydrogen peroxide or sources thereof. Suitable water soluble sources of hydrogen peroxide include percarbonates, perborates, persulphates, etc. See column 7, lines 25-60. The compositions comprise from 0.1% to 15% by weight of active oxygen in said composition. See column 8, lines 1-20.

The pH of the liquid compositions can be from 0 to14. See column 9, lines 1-10. The compositions may also contain a chelating agent such as EDTA, eitehylenetriamine pentacetates, diethyltriamine pentaacetate, alkali metal ethane 1-hydroxy diphosphonates, diethylene triamine pentaacetic acid, etc. See column 9, lines 1-69. chelating agents may be used in amounts up to 5% by weight. The compositions also may contain a builder such as citric acid, oxodisuccinates, fatty acid builders, etc., in amounts from 0 to 10% by weight. See column 12, line 20 to column 13, line 2. The compositions may also contain other ingredients such as other surfactants, builder systems, solvents, dyes, perfumes, etc. See column 11, lines 44-55.

In a preferred embodiment, the invention encompasses a method of cleaning carpet with a compositions which comprises the steps of applying onto said carpet, said composition in a liquid form, optionally rubbing and/or brushing said carpet, then leaving said composition to dry onto said carpet before removing it from said carpet, preferably by mechanical means including brushing out and/or vaccum cleaning. See column 6, lines 40-69.

Scialla et al do not teach, with sufficient specificity, a method of cleaning carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant, builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, for clean carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant, builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Schialla et al suggest a method of cleaning carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant, builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 23-25 and 86-100 rejected under 35 U.S.C. 103(a) as being unpatentable over Scialla et al (US 6,008,175) as applied to claims 1, 5-11, 13-22, 26-33, 35-38, 75-78, and 85 above, and further in view of Talley (US 6,043,207).

Scialla et al are relied upon as set forth above. However, Scialla et al do not teach the use of a builder material such as an alkali metal carbonate or phosphate in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

Talley teaches an alkaline cleaning composition for cleaning heavily soiled surfaces such as baking pans, beer kettles, metal, ceramic or plastic parts and equipment, carpets, fabrics, and the like. See column 4, lines 10-25. The cleaning composition contains a peroxygen compound, a metasilicate, a builder, and a chelate. The cleaning composition is typically in a dry, granulated form which is dissolved n a carrier, such as water, to form a cleaning solution before use. The cleaning composition can be applied by a mechanical sprayer, or other suitable technique. See column 4, lines 25-40. The cleaning composition preferably contains from about 25% to about 40% by weight of a eroxygen compound such as perborate, percarbonate, etc. See colum 4, lines 45-60. The chelating agent is EDTA or a derivative of a phosphonic acid. The builder preferably contains sodium tripolyphosphate, sodium carbonate, sodium bicarbonate, etc. See column 5, lines 1-30. The total amount of builder is from 20 to 75% by weight. See column 5, lines 55-65. Surfactants may also be used in the compositions such as nonionic, anionic surfactants, etc. See column 6, lines 15-69. The cleaning composition, when used in solution, has a pH in the range of 8 to about 12. See column 9, lines 20-45.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a builder such as sodium tripolyphosphate or sodium carbonate, in the cleaning composition taught by Scialla et al, with a reasonable expectation of success, because Talley et al teach the use of sodium tripolyphosphate or sodium carbonate in a similar carpet cleaning composition and further, Scialla et al teach the use of builders in general.

Claims 1, 5-11, 13-15, 18-23, 26-38, 75-78, 85, 86, 89, 92, 95, and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talley (US 6,043,207) in view of Scialla et al (US 6,008,175).

Talley is relied upon as set forth above. However, Talley does not teach cleaning carpet by extracting or rubbing carpet or a method of cleaning carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant, builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Scialla et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean carpet using an extracting or rubbing step with the cleaning composition taught by Talley, with a reasonable expectation of success, because Scialla et al teach cleaning a carpet with a similar composition using an extraction or rubbing step and further, Talley teaches cleaning carpets in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, for clean carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant, builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Talley in combination with Schialla et al suggest a method of cleaning carpet by rubbing or extracting the carpet using a composition containing an active oxygen compound comprising a peroxygen moiety, surfactant,

builder, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Response to Arguments

Note that, Applicant's arguments are moot in view of the new grounds of rejection as set forth above. With respect to the double patenting rejections, the Examiner asserts that claims 28-50 of copending Application No. 10/214625 and claims 1-21 and 23-25 of 10/299536 suggest the material limitations of the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 5-11, 13-15, 17-38, 75-78, and 85-100 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28-50 of copending Application No. 10/214625 and claims 1-21 and 23-25 of 10/299536. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 28-50 of 10/214625 and claims 1-21 and 23-25 of 10/299536 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to clean carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because claims 28-50 of copending Application No. 10/214625 and claims 1-21 and 23-25 of 10/299536 suggests cleaning carpets with a composition containing phosphonate, aminocarboxlate, surfactant, hydrogen peroxide, carbonate, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
January 7, 2006